

## **REMARKS**

The Applicant and Applicant's attorney wish to thank the Examiner for the time spent reviewing the application and preparing the Office Action. The Office Action, mailed June 6, 2008, considered and rejected claims 1-3, 5, 8, 18, 20-24, 26 and 28 in light of Bisberg (U.S. Patent No. 3,903,613), Dyer (U.S. Patent No. 4,828,257), Bond (U.S. Patent No. 4,889,108), and Sweeney (U.S. Patent No. 4,358,105).<sup>1</sup> By this paper, claims 1 and 18 have been amended. Accordingly, following this paper, claims 1-3, 5, 8, 18, 20-24, 26, and 28 are pending, of which claims 1 and 18 are the only independent claims at issue.

### **Rejections Under 35 U.S.C. § 103**

In the Office Action, claims 1, 3, 5, 8, 18, 23, 24, 26, and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bisberg in view of Dyer. Applicant submits that claims 1, 3, 5, 8, 18, 23, 24, 26, and 28 are not obvious in light of Bisberg.

Bisberg discloses a bicycle training device that simulates road conditions while the cycle and cyclist are in a static position. The device includes a multi-gear bicycle mounted on a riser tripod, a rear pulley assembly upon which the rear wheel of the bicycle is disposed, and an audio information system which comprises a tape playback unit. The tape playback unit utilizes a tape having two tracks. One track supplies a normal audio signal to the operator of the bicycle to advise the operator that an incline lies ahead on the roadway. The other track supplies varying frequencies to a dynamometer, which applies resistance to movement of bicycle wheel through the rear pulley assembly.

Dyer discloses a system and method for providing an exercise program at a desired pace throughout each repetition and which applies resistance against a user's efforts based upon user performance history and user demographics. A central controller stores user demographics and performance information, and provides this information as well as program criteria and evaluations to any of a plurality of exercise stations. The exercise stations each include a magnetic brake for producing the desired resistance levels. A central processor unit (CPU) controls the exercise program at each station. The initial brake resistance is established based upon user demographic information and initial user performance of an exercise. The brake

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

resistance is represented by lights in an LED stack simulating weights which move up and down along a run in conformity with position of a movement arm which the user moves. A pacer light moving adjacent the LED weight stack guides the user at a desired pace throughout each repetition. User performance including rate and limb extension is monitored and resistance is changed during the exercise period as performance corresponds to selected criteria. The user's performance is evaluated based on performance history and demographically-based criteria to provide coaching comments to the user and to propose changes to the exercise program. Selected educational and instructional material relevant to the particular user may also be provided. In addition, by monitoring user parameters such as weight and percent body fat, and in view of user demographic and performance information, diet control information may also be provided.

While different in scope and focus, Applicant's claims 1 and 18 are directed to two exemplary embodiments wherein a warning is provided to a user of an impending change in a scripted exercise session. For example, amended claim 1 recites, among other things, an "exercise system comprising: an exercise apparatus having a level of effort that is adjustable with a resistance producing actuator that is coupled between a body engaging member and a frame of said exercise apparatus, said exercise apparatus providing a scripted virtual personal training experience for a user of said exercise apparatus, said scripted virtual personal training experience comprising timed changes in said level of effort, ... said scripted virtual personal training experience provides warning of an impending change in said level of effort prior to a change in said level of effort, ... said scripted virtual personal training experience being continuously modifiable throughout an exercise routine based upon a performance of the user during said exercise routine."<sup>2</sup>

The claimed exercise system, thus, provides a warning of an impending change in the scripted exercise experience. This helps a user prepare, both mentally and physically, for the

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<sup>2</sup> Similarly, amended claim 18 recites an "exercise apparatus comprising: a frame; a body-engaging member, a resistance producing actuator coupled between said frame and said body-engaging member, said actuator being adapted to alter a level of effort required of a user while the user engages said body-engaging member; an audio display providing an audible alert of an impending change in a scripted exercise session that is continuously modifiable throughout an exercise routine based upon a performance of a user of the exercise apparatus during said exercise routine; and an actuator controller coupled to said actuator for implementing said change subsequent to said audible alert

anticipated change in the scripted exercise experience. The system and method then automatically changes the scripted exercise experience that was warned of by the virtual personal trainer or otherwise. *See*, for example, the following passages from Applicant's specification:

The script preview would then, in a step 142, indicate something like "We are now approaching a hill. You will note an increased resistance to pedaling in a few seconds which will steadily increase until we reach the crest of the hill in about one and a half minutes." Applicant's specification, page 15, lines 17-20.

[C]omputer 24 can, under software and hardware control, control the electrically actuated brake 52 which is coupled to the crank of the stationary bike. In this fashion, the pedaling force that must be exerted on pedals 38 to cause the crank 36 to rotate at a given speed can be varied under computer control. Applicant's specification, page 9, lines 1-5.

The Office Action asserted that Bisberg discloses an actuator coupled between said frame and said body engaging member. Applicant respectfully disagrees and submits that Bisberg neither teaches nor suggests an "a resistance producing actuator coupled between said frame and said body-engaging member" and "an actuator controller coupled to said actuator for implementing said change subsequent to said audible alert" as recited in the claims. Rather, Bisberg discloses "a driven pulley 30" upon which a "rear bicycle wheel 14 is disposed." Driven pulley 30 is connected to dynamometer 52, which is in turn connected to voltage comparator 50. Voltage comparator 50 receives a signal from the tape playback unit 40. The frequency of the signal received by voltage comparator 50 governs the resistance provided to pulley 30 by dynamometer 52. Because Bisberg's pulley and dynamometer are not coupled between a body engaging member and a frame of the exercise device, Bisberg fails to disclose or obviate claims 1 and 18.

Additionally, the Office Action asserts that Dyer discloses a scripted virtual personal training experience that is modifiable based upon a performance of a user. Again, Applicant respectfully disagrees. As discussed in Applicant's Appeal Brief filed in this case on March 6, 2006, at best, Dyer creates "settings", which specify a simulated weight resistance and a number of repetitions. *See*, for example:

After recognizing and accepting a previous user, the exercise station CPU 160 examines all pertinent data, such as previous weight lifted, previous number of repetitions, time since the equipment was last used, demographic information of the user and what kind of results the user is looking for (for example, strength, bulk or definition). From this information, the CPU 160

updates the weight value to be used in the current session, and provides output to the user, telling him the weight and number of repetitions that he should do during this exercise period. If the user does not wish to use the suggested settings, he may override the computer by going into a manual mode and entering a desired weight level. Dyer, col. 16 lines 7-21.

The "settings" of Dyer cannot be equated to Applicant's claimed "scripts". In particular, there is no timed change in the exercise experience with Dyer's settings of weight and number of repetitions. An essential characteristic of Applicant's scripts, however, is a timed change in the level of effort. That is, a script is a timed sequence of events. *See*, for example:

A script is simply a sequence of exercise or other health-related events that are performed in fixed or variable sequences. Applicant's Specification, page 12, lines 29-30 (emphasis added).

The temporal nature of the script is therefore clear: it includes a fixed or variable sequence of events. Dyer fails to disclose a sequence of events. Rather, Dyer's single event (a certain number of repetitions at a certain weight) is untimed. Thus, Dyer fails to disclose or obviate claims 1 and 18.

It is, therefore, requested that the rejection under 35 U.S.C. § 103(a) to claims 1, 3, 5, 8, 18, 23, 24, 26, and 28 be reconsidered and removed. Claims 3, 5, and 8 depend from base claim 1 and claims 23, 24, 26, and 28 depend from base claim 18, and thus incorporate the elements recited respectively therein.

In the Office Action, claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Dyer in view of Bond. The Office Action also rejected claims 20-22 under 35 U.S.C. § 103(a) as being unpatentable over Bisberg and Dyer in view of Sweeney. By virtue of their dependence on independent claims 1 and 18, claims 2 and 20-22 incorporate the elements recited in their respective base claims. As discussed above, Bisberg and Dyer fail to disclose or obviate independent claims 1 and 18. Furthermore, it has not been established the Bond or Sweeney remedies the deficiencies of Bisberg and Dyer. Additionally, in rejecting claims 20-22, the Office Action merely referred to elements recited in claim 20. The Office Action failed to provide any reason for rejecting claims 21 and 22. Applicant therefore requests that the rejections under 35 U.S.C. § 103(a) to claims 2 and 20-22 be reconsidered and removed.

**CONCLUSION**

By this paper pending claims 1 and 18 have been amended. Claims 1-3, 5, 8, 18, 20-24, 26, and 28 are pending and should be in condition for allowance. Reconsideration and allowance of the above-identified claims are now respectfully requested.

In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 2<sup>nd</sup> day of September 2008.

Respectfully submitted,

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